

Decision of the Dispute Resolution Chamber

passed on 11 July 2023

regarding an employment-related dispute concerning
the player Mohamed Osama Aly Darwish

COMPOSITION:

Frans DE WEGER (the Netherlands), Chairperson
Mario FLORES CHEMOR (Mexico), member
Roy VERMEER (the Netherlands), member

CLAIMANT / COUNTER-RESPONDENT:

Mohamed Osama Aly Darwish, Palestine and Germany
Represented by Ashot Kyureghyan

RESPONDENT / COUNTER-CLAIMANT:

Haras El Hodod, Egypt
Represented by Ahmed Abbas Mohamed Elhag

INTERVENING PARTY:

TURU 1880 Düsseldorf, Germany

I. Facts of the case

1. The parties to the dispute are the Palestinian and German player, Mohamed Osama Aly Darwish (hereinafter: *the Player* or *the Claimant/Counter-Respondent*), the Egyptian Club, Haras El Hodod (hereinafter: *the Club* or *the Respondent/Counter-Claimant*) and the German club, TURU 1880 Düsseldorf (hereinafter: *the Intervening Party*).
2. On 17 August 2022, the Club sent to the Player a document called a “summary of contract for professional player” (hereinafter: *the offer*).
3. The offer contained *inter alia*, the following information:
 - Duration of the contract: 3 seasons 2022/2023, 2023/2024 and 2024/2025.
 - The salary: the 1st season: USD 55,000 (including taxes), the 2nd season: USD 60,000 (including taxes) and the 3rd season: USD 65,000 (including taxes).
 - “Housing: in the club hotel”.
 - One flight ticket.
 - “The contract considered valid after the player passes the Medical examination”.
 - Bonus: from USD 250 to USD 500 “after every win”.
 - “The offer valid for 7 days from the day” (quoted verbatim).
4. It is to be noted that the specimen of the offer available on file is only signed by the Club and does not contain any designated space for the Player’s signature or expression of acceptance.
5. On 28 August 2022, the Player travelled from Dusseldorf (Germany) to Cairo (Egypt).
6. On 3 September 2022, the Player and the Club allegedly signed a contract (hereinafter: *the Contract*) valid for the 2022/2023 season (one season). The Player contested the validity of this contract as he stated that he signed a blank copy.
7. In accordance with clause 2 of the Contract, the Player was entitled to the following amounts:
 - EGP 260,000 payable on 10 October 2022;
 - EGP 65,625 payable on 10 November 2022;
 - EGP 65,625 payable on 10 December 2022;
 - EGP 65,625 payable on 10 January 2023;
 - EGP 65,625 payable on 10 February 2023;
 - EGP 65,625 payable on 10 March 2023;
 - EGP 65,625 payable on 10 April 2023;
 - EGP 65,625 payable on 10 May 2023;
 - EGP 65,625 payable on 10 June 2023;
 - EGP 260,000 payable on 10 July 2023.

8. Clause 5 of the Contract reads as follows:

"1. The employment contract may be terminated by mutual agreement.

2. The Player or Club cannot unilaterally terminate the contract unless the right to terminate the contract is stipulated in the FIFA Regulations on the Status and Transfer of Players [RSTP]. Particular reference is made to art. 13 and 14, and art 14 bis and 17 of the [RSTP], which state that a party may terminate a contract where there is just cause. If there is just cause, the contract may be terminated at any time, even during the course of a season.

3. If the Player or Club unilaterally terminates the contract for a just cause reason the other party will be liable to pay compensation, in accordance with the [RSTP] and the Jurisprudence of the FIFA DRC [Dispute Resolution Chamber]. Likewise if the Player or Club unilaterally terminates the contract without just cause the party in breach will be liable to pay compensation, in accordance with the [RSTP] and the Jurisprudence of the FIFA DRC. In the event of a dispute."

9. Clause 4.6 of the Contract reads as follows:

"The player should bear the taxes of this contract and any fees according to the law, the club shall deduct taxes from the player dues and transfer them to the taxes under his responsibility."

10. Clause 6.2 of the Contract reads as follows (the clause was handwritten):

"The two parties agreed to extend the term of the contract for one or more seasons after the end of the contract term with the consent of both parties with a new value and financial terms".

11. In accordance with the information available in the Transfer Matching System (TMS), the Egyptian 2022/2023 registration periods were from 1 September 2022 to 15 October 2022 and from 1 January 2023 until 31 January 2023.

12. On 26 September 2022, the Player sent the Club a "warning notice" indicating that the Club terminated the Contract without just cause during the protected period and that he is entitled to compensation in accordance with art. 17 of the RSTP. The Player stated that the Club is in default of USD 186,885. The Player granted the Club 15 days in order to resolve this matter amicably.

13. On 26 September 2022, the Club allegedly requested the Egyptian Football Association (EFA) to: *"take the necessary steps of contacting the Palestinian Football Association informing them of the player's absence since 20/09/22, and informing the player to return to continue his contract with the club".*

14. On 7 October 2022, the Club sent a letter to Player, stating, *inter alia*, that:
 - *"The contents of the letter dated 26 September 2022 was not true"*.
 - The Club informed the EFA that the Player was absent for the team training and that he left the Player's hotel without any written permission and that he *"disappeared from the team camp causing"* the Club financial damages.
 - The Club granted the Player 72 hours deadline to return to the Club and to commit with the training preparation.

15. On 9 October 2022, the Player sent the Club a "final notice of default" stating, *inter alia*, that:
 - The Club provided contradictory information.
 - The Club failed to provide with the Player's contract, that he was registered prior the Player's notice dated 26 September 2022 and that the Club did not prove that it paid the Player since the beginning of the employment relationship.
 - As to the absence of the Player, the Player stated that this information was not true as the Club prevented him from attending the training seasons.
 - The Club disregarded the Player until the letter of 26 September 2022.
 - The Player requested with the exact date of the registration referring to art. 5 RSTP.
 - The request of the Club in order for the Player to return within 72 hours should be disregarded.
 - The Player requested the payment of USD 186,885 as compensation granting the club 5 days to comply with it.

16. In accordance with the information available in TMS, on 11 October 2022, the Club entered a transfer instruction (n° 595559) to engage the Player permanently.

17. On 12 October 2022, the Club sent a letter to Player, stating, *inter alia*, that:
 - The Club was carrying out the Player's registration.
 - The Player did not receive any financial due until it is confirmed by the Palestinian Football Association (PFA) that the Player is a free player, and then he would receive a copy of this contract from the EFA.
 - The Club stated that both parties have a contract, and *"if the player does not attend on the specified date, [the Club] will file a complaint against [the Player]"*.

18. On 14 October 2022, the Player sent the Club a "final notice of default" contesting the Club's letter. The Player further "recommended" the Club to pay the full compensation in the amount of (USD 186,885) and requested the Club to amicably settle this dispute granting a deadline until 22 October 2022.

19. In accordance with the information available in TMS, on 23 October 2022, the Player was registered with the Club. It is to be noted that EFA only confirmed the registration on 23 April 2023.
20. On 23 October 2022, the Player put in default the club in the amount of USD 186,885, granting a deadline until 7 November 2022 in order to remedy the default.
21. On 29 January 2023, the Player and the Intervening Party signed an agreement valid from 1 February 2023 until 31 May 2023. The Player was engaged as an amateur player. The Intervening Party paid the Player EUR 250 per month as transport fees and the Player did not receive any salary.
22. In accordance with the information provided by German Football Association, the Intervening Party's first men's team is still playing in the Oberliga Niederrhein (5th division) in the current season, and it has registered professional players on a national level in the past three years.

II. Proceedings before FIFA

23. On 8 November 2022, the Player lodged a claim against the Club in front of FIFA and requested compensation for breach of contract. In parallel and before being summoned to the proceedings, the Club on 13 November 2022, filed a claim against the Player for breach of contract.
24. On the basis of art. 21 par. 3 of the Procedural Rules Governing the Procedural Rules, the FIFA general secretariat joined both the claim of the Player and the claim of the Club. For the sake of good procedural order, the claim of the Club was processed as a counterclaim.

a. Position of the Claimant/Counter-Respondent

25. According to the Player:
 - On 17 August 2022 the Club sent an employment offer to the Player, which was accepted by him. Therefore, the offer was a valid contract as it contained all the *essentialia negotii*.
 - On 28 August 2022, he arrived in Egypt and on 30 August he undergone medical examination.
 - On 3 September 2022, the Club requested the Player to sign a blank contract (4 copies in total 2 in Arabic and 2 in English) and that he would receive a copy after the Club files those contracts, according to all provisions stated and agreed by the Parties. However, the Club did not comply with it and refused to provide him with a copy of the contract.
 - On 6 September 2022, it was announced to the media that the Player was hired for 3 years.

- On 19 September 2022, the Player participated in the training seasons. On the same date, the Club informed the Player of its decision to terminate the employment relationship due to low performance and was requested to leave the hotel.
- The Player stated that from 19 September 2022 until 26 September 2022, the Club did not contact the Player, and he was prevented from training on 22 September 2022.
- Through official media in Egypt, the Club announced that the employment relationship was mutually terminated – which is challenged by the Player.
- Following the default notice by the Player, the Club *“tried to overturn and distort facts, even contracted the Player and informed him to join the team”*.

26. According to the Player the Club terminated the employment relationship without just cause. It is to be noted that in accordance with the Player the basis of the employment relationship between the Player and the Club was the offer.

The existence of a valid and binding contract

27. The Player argued that the offer dated 17 August 2022 contained all *essentialia negotii* elements and should be considered as a valid contract. As to the signature, the Player stated that: *“The offer is signed and stamped by the Club and the Player accepted the offer by flying to Egypt and directly training with them, which is proven by the air ticket the Club bought for him, the proof of signing [the Contract] and his training with the Club”*.
28. The Player further supported its assertion of the offer as a valid contract, as the Club did not challenge the acceptance of the offer but also admitted it in its letter dated 12 October 2022.

Failure of the club to register the player in due course

29. The first registration period in Egypt was open from 1 September 2022 until 15 October 2022, and the Club failed to provide any information to the registration process and considered that the International Transfer Certificate (ITC) was not delivered.
30. The Player further added that in the scenario that the EFA requested the ITC to the Palestinian Football Association, said association would have 7 days to provide with its reply, i.e., 22 October 2022.

Bad faith of the Club in signing different employment contract and not providing the Player with his original copy, resulting in the invalidity of the Contract

31. According to the Player the Contract shall be considered null and void due to duress (article 29 Swiss Code of Obligations -SCO - *et seq.*) and due to an unfair advantage (article 21 SCO), in view of the following points:

- a) The Player was in a straitened situation when signing the Contract:

- The Player only received a copy of the Contract when the Respondent attempted to file an incomplete claim against the Player.
- The Player was in an uncomfortable position from a financial and sporting perspective.
- The Player was not registered.
- At the time of the execution of the Contract, there was no other alternative available to the Player than to obey the Club's control as the Player was out of the procedure of requesting the ITC.
- The Club *"did not adduce any evidence that the Player had other employment offers to remain employed. Secondly, and more importantly, the Player was free to decide for which club he wanted to play after his former employment contract with the previous club ended. It is a direct and most straightforward obligation (NOT A RIGHT) of the new Club to request the ITC of the Player"*.

b) The Club exploited the straitened circumstances:

- The Club was in complete control of the ITC process.
- *"The Club not only acted in bad faith when obstructing the request and proper delivery of the ITC in due time on the grounds of [the offer], but that the Club indeed exploited the straitened circumstances of the Player in a despicable manner by forcing [the Contract] upon him"*.
- The Contract was unbalanced and that there is an obvious and clear disparity between performance and consideration in the Contract. The Contract was in the sole interest of the Club, the period was shortened from 3 seasons to 1 season, resulting that the Player's waived 2 years of employment.
- Both the procedural as well as the substantive requirements of article 21 SCO are met and that, as a result, the Contract is invalid.

32. The duress is also proven by the fact of committing fundamental error by the Club when concluding the Contract.

a) Existence of error

- The Player stated in his statement, that the Club invited the Player to its headquarters to sign a contract, which did not correspond to the offer by its essential terms, information that the Player was unaware of. The Club provided the Player 4 blank contracts which the Player refused to sign; however, he was convinced that it would be filled according to what the parties agreed.
- The Club did not comply with it and refused to provide him a version of the signed Contract.
- The Player only found out of the error when he received the Contract for the first time when the Club filed a claim.

- b) The Error is fundamental: *"The existing error not only amends the essential terms of the employment relation, particularly the remuneration of the Player, but also consequently it is in favour of the Club anything for the benefit in return, thus causing instability and disbalance in the sense of benefits related to the employment relations covering [the offer] and [the Contract]"*. Moreover, another substantial error is the duration of the Contract.

Termination of the offer without just cause by the Club

33. The offer was breached on 19th of September 2022, considering that the Club did not register the Player and the latter was informed by the Club that the employment relationship was terminated due to performance which was not a valid reason to terminate a contract.

34. The Player requested the following relief:

"A. To accept this claim;

B. Essentially, to find [the Contract] invalid on the grounds of article 21, 23, 24 and 31 of SCO;

a) Find that the [the Club] terminated [the Offer] without just cause;

b) To issue a decision requiring [the Club] to:

1. Pay the Player the amount of 180,000-/ USD, as a compensation of residual value and outstanding payables as per article 12bis and 17.1 of the FIFA RSTP, plus five percent (5%) per annum interest rate, starting from 19 of September 2022 until its effective and entire payment;

2. Pay the Player the amount of 20,000-/ USD, based on the specificity of sport and article 337.c (3) of SCO plus five percent (5%) per annum interest rate, starting from date in which the FIFA decision is communicated;

3. Order [the Club] to pay [the Player] an amount of 1,000-/USD for the flight ticket

C. Alternatively, if Honourable DRC finds [the offer] invalid and/or [the Contract] valid and rejects the request for relief, set forth in the par. 170 (a.) of the present claim on such grounds, we humbly request from the Honourable DRC to:

a) Find that [the Club] terminated [the Contract] without just cause;

b) To issue a decision requiring [the Club] to:

1. Pay the Player the amount of 54,347 USD, as a compensation of residual value and outstanding payables as per article 12bis and 17.1 of the FIFA RSTP, plus five percent (5%) per annum interest rate, starting from 19 of September 2022 until its effective and entire payment;

2. Pay the Player the amount of 18,114-/ USD, based on the specificity of sport and article 337.c (3) of SCO plus five percent (5%) per annum interest rate, starting from date in which the FIFA decision is communicated;

3. Order [the Club] to pay [the Player] an amount of 1,000-/USD for the flight ticket

D. To impose [the Club] a ban on registering players for two entire and consecutive registration periods as per article 17.4 of the FIFA RSTP;

E. To order [the Club] to assume the entirety of the FIFA DRC administration and procedural fees, if any".

b. Position of the Respondent/Counter-Claimant

35. As to the facts, the Club argued that the offer sent on 17 August 2022 was an initial offer that is not final on condition of attendance within a one-week period, adding that if the Player would not attend the offer would be cancelled, and also conditional on passing the medical examination.

36. The Club did not pursue with the signature as the Player did not respond within 7 days. On 28 August 2022, after the end of the period specified, the Club was surprised by the Player's presence in Cairo.

37. The Club stated as follows:

- The parties signed a contract only for one season with a possibility of extension of the Contract if agreed by both parties.
- The offer was cancelled as the 7 days elapsed.
- As to the Player allegation that he did not receive a copy of the Contract, the Club rejected this argument, according to the Club he took a copy of it and not a real copy, "because the player receives an original copy of the contract after completing documentation with the Football Association and receiving the international card from the Palestine Football Association which confirms his status and that he is not associated with any other club or subject to suspension or any other penalties".

- The Player was officially registered as a member of the team. The Club provided with a document "Players registered to Haras el Houdoud Club for 2022/2023 season" stating that he was registered with the Club.
- The Player did not receive any financial compensation as the registration process was not yet complete.
- As to the offer, the Club stated that it was void as he did attend after the specified period. However, he was given with "another opportunity" to complete the procedures and medical examinations.
- The Club further added that (quoted verbatim):
"We would like to ask why the player and his lawyer are responding with such behaviour? We committed to the player and gave him another chance to attend after he disappeared without permission for 72 hours. We responded to his lawyer on 07/10/2022 (Document 9) and we explained to him the inaccuracies, assuming that the player had told him false information. But he continued his inaccuracies and sent further letters containing false information (Documents 11, 12 and 13) and the response to it from our side is attached (Documents 9 and 14). We had reason to believe that there was an attempt at fraud or blackmail on the part of the player, and that he might have received another offer, so he did so to evade his commitment to the contract between us. Therefore, in order to preserve the rights of the club, we continued the registration procedures, despite the lack of response from the Palestine Football Association regarding the international card, which in fact arrived late on the date 22/10/22. Now, the Egyptian League has commenced, which confirmed our suspicions about the player and his lawyer and their irresponsible behavior and determination to claim the financial compensation".

38. The Club requested the following relief:

- 1) That [the Player] pay an amount of 55,000 US dollars, the value of the financial compensation for the duration of the contract, which is one year, for these actions that have resulted in the team losing one place in the registered squad list.*
- 2) That [the Player] pay an amount of 50,000 US dollars in moral compensation for the defamation of the name of the club caused by false claims that the club had expelled him from the accommodation and released him, published with his knowledge on unofficial sites; the club did not declare this on its official website.*
- 3) Imposing penalties on him for violating the provisions of Articles 16 and 17 of FIFA, with the player's request to terminate the contract without just reason and with false claim, in addition to the attempted financial extortion of the club as a result of this allegation.*
- 4) That [the Player] pay the sum of 5,000 US dollars in legal fees.*
- 5) That [the Player] pay 500 US dollars for the travel ticket, plus 800 US dollars for the medical examination costs, plus 2,700 US dollars for the accommodation costs.*
- 6) That [the Player] pay 5% financial interest on financial claims from the date of his disappearance 25/09/22 until the date of the issuance of the decision by your honorable selves, and taking into account the objectives of FIFA in terms of fair play and morals,*

according to the text of Article 52, Article 15 and Article 20 Paragraph 5 of the FIFA Disciplinary Code.

7) That [the Player] pay 5,000 US dollars which is registration fee paid to the Egyptian Football Association in order to set up and release his international card so he can join in Egyptian Premier League”.

c. Rejoinder of the Claimant/Counter-Respondent

39. The Player rejected the statements made by the Club.
40. In particular, as to the acceptance of the offer, *“the allegation that the Player did not answer within the specified period of seven (7) days, definitely this is a false allegation and should not take into consideration, because the Player answered, accepted, and signed [the offer] directly when he received it”*. In this respect, *“if the Player did not answer the Club when it sent [the offer] on 17 August 2022, so why did the Club buy a flight ticket to the Player?!!, the Club itself admitted (...) that it bought a flight ticket to the Player, which means that all our allegations in this regard are true”*.
41. As to the allegation that the Player stayed at the hotel and did attend training, the Player stated that it is not true and that the Club has not provided any evidence proving it.
42. As to the Contract, the Player stated that *“the Club clearly admitted that the Player received “NOT A REAL COPY” which in extreme proves our argumentations in this regard, that on 03 September 2022, the Player merely signed and fingerprinted in the blank contracts without receiving the completing one, assuming that the Club would fill it according to what they agreed by 1st contract, then gave him the original one”*.
43. To support the assertion that the Player signed a blank contract, the Player provided some photos in which it allegedly appears that the Player signed a blank contract.
44. The Player concluded that the Chamber *“should consider [the Contract] null and void under articles 21, 23, and 31 of SCO, as the Player occurred in a fundamental error when he signed in the 2nd contract, as the Club, in bad faith, did not fill [the Contract] according to what the parties agreed on [the offer], and to consider that the 1st contract is valid, binding and should be applicable in this case”*.
45. As to the allegations related to the Player’s absence, in particular to the alleged letter sent to EFA, the Player stated that said correspondence was created, otherwise, why the Player did not receive said information in the communications prior to the claim filed in FIFA. The Player indicated that *“the Club failed to produce any evidence proving that the alleged document sent to EFA or PFA or even to the Player himself, and thus, the alleged document should be considered null and void and not taken into consideration”*.

46. Additionally, the Player stated that he was in the hotel until 25 September 2022, which contradicted what was stated by the Club indicating that he was absent as from 20 September 2022.
47. As to the allegation related to non-paying salaries: the Club committed a serious breach when it refused to pay the Player any salaries since he entered into a binding and valid employment contract on 17 August 2022.
48. As to the allegations related to registration, the Player requested evidence of the registration throughout all the correspondence to the Club however, it failed to provide any, even more, the Club did not provide the Player any report from FIFA TMS about the history of the transfer.
49. As to the allegations related to the moral compensation and the allegations related to the media, the Player stated that the claim of the Club is unjustified, groundless, full of distortion of facts and is a subject to be rejected in its entirety.
50. The Player requested the following relief:

"In view of all the foregoing, and taking into account the clear balance of probabilities of facts and evidence in favour of the Player on behalf of the Player we herein request the FIFA Dispute Resolution Chamber to issue a decision of rejecting the claim of the Club and accept our filed claim".

d. Final comments of the Respondent/Counter-Claimant

51. In its reply the Club stated the following:
 - The offer expired on 24 August 2022 and it was not valid after that period.
 - The contract provided to the Player a standard contract issued by EFA.
 - The Club and the Player signed 8 copies in total. *"The full copies are accepted after being reviewed by the Egyptian Football Association who ensure that the club put a copy of the contract on the registration system before addressing the national federation affiliated with the player (the Palestinian Football Association). After the conclusion of the Contract, the Club would receive a copy of the contract, and the Player would receive a copy from the EFA.*
 - As to the blank contract, the club stated that *"it is illogical and even impossible for a player with such specifications as a professional to claim that he signed empty contracts and put his fingerprint and sign eight copies of an empty contract in Arabic and English, and also without consulting his lawyer or agent since he is a professional".*
 - As to the termination announced in all media, the Club stated that *"the club is only responsible for its official website and that the statements published and submitted by the player have nothing to do with the club's official website".*

52. The request for relief was slightly amended:

"1) That [the Player] pay an amount of 55,000 US dollars, the value of the financial compensation for the duration of the contract, which is one year, for these actions that have resulted in the team losing one place in the registered squad list, plus 5% annual interest beginning from 3rd September 2022 until payment is completed

2) That [the Player] pay an amount of 50,000 US dollars in moral compensation for the defamation of the name of the club caused by false claims that the club had expelled him from the accommodation and released him, published with his knowledge on unofficial sites; the club did not declare this on its official website, plus 5% annual interest beginning from 3rd September 2022 until payment is completed.

3) Imposing penalties on him for violating the provisions of Articles 16 and 17 of FIFA, with the player's request to terminate the contract without just reason and with false claim, in addition to the attempted financial extortion of the club as a result of this allegation.

4) That [the Player] pay the sum of 5,000 US dollars in lawyer fees.

5) That [the Player] pay 500 US dollars for the travel ticket, plus 800 US dollars for the medical examination costs, plus 2,700 US dollars for the accommodation costs.

6) That [the Player] pay 5% financial interest on financial claims from the date of his disappearance 25/09/22 until the date of the issuance of the decision by your honorable selves, and taking into account the objectives of FIFA in terms of fair play and morals, according to the text of Article 52, Article 15 and Article 20 Paragraph 5 of the FIFA Disciplinary Code.

7) That [the Player] pay 5,000 US dollars which is registration fee paid to the Egyptian Football Association in order to set up and release his international card so he can join in Egyptian Premier League".

e. Position of the Intervening Party

53. The Intervening Party stated the following (quoted verbatim):

"We as a club take a stand on our player Mohamed Darwish.

We first heard from the player on 21.01.2023 that another coach recommended him to our coach. We as a club or those responsible had no contact with the player before 23.01.2023 and also heard from him for the first time on 21.01.2023.

We had no influence on what happened to him in Egypt. We didn't persuade the player to come to us from another club. Unfortunately we don't believe that we could have let a player give up 5000 dollars to play for us for 250 euros".

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

55. First of all, the Dispute Resolution Chamber (hereinafter also referred to as *Chamber* or *DRC*) analysed whether it was competent to deal with the case at hand. In this respect, it took note that the present matter was presented to FIFA on 8 November 2022 and submitted for decision on 11 July 2023. Taking into account the wording of art. 34 of the March 2023 edition of the Procedural Rules Governing the Football Tribunal (hereinafter: *the Procedural Rules*), the aforementioned edition of the Procedural Rules is applicable to the matter at hand.
56. Subsequently, the members of the Chamber referred to art. 2 par. 1 of the Procedural Rules and observed that in accordance with art. 23 par. 1 in combination with art. 22 par. lit. b) of the RSTP (May 2023 edition), the Dispute Resolution Chamber is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a player from Palestine and Germany and a club from Egypt, with the involvement of a German club.
57. Subsequently, the Chamber analysed which regulations should be applicable as to the substance of the matter. In this respect, it confirmed that, in accordance with art. 26 par. 1 and 2 of the RSTP (May 2023 edition), and considering that the present claim was lodged on 8 November 2022 and the counterclaim on 13 November 2022, the October 2022 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.
58. For the sake of completeness, the Chamber remarked that the Player referred to Swiss law to support his argumentation. In this respect, the Chamber wished to recall that when deciding a dispute before the Dispute Resolution Chamber, FIFA's regulations prevail over any national law that the parties might have chosen. In this regard, the Chamber emphasised that the main objective of the FIFA regulations is to create a standard set of rules to which all the actors within the football community are subject to and can rely on. This objective would not be achievable if the Chamber would have to apply the national law of a specific party on every dispute brought to it. By the same token, the Chamber wished to point out that it is in the interest of football that the cases are based on uniform criteria rather than on provisions of national law that may vary considerable from country to country. Therefore, the Chamber deemed that it is not appropriate to apply the principles of a particular national law but rather the Regulations, general principles of law and, where existing, the Chamber's well-established jurisprudence.

b. Burden of proof

59. The Chamber recalled the basic principle of burden of proof, as stipulated in art. 13 par. 5 of the Procedural Rules, according to which a party claiming a right on the basis of an alleged fact shall carry the respective burden of proof. Likewise, the Chamber stressed the wording of art. 13 par. 4 of the Procedural Rules, pursuant to which it may consider evidence not filed by the parties, including without limitation the evidence generated by or within the TMS.

c. Merits of the dispute

60. Its competence and the applicable regulations having been established, the Chamber entered into the merits of the dispute. In this respect, the Chamber started by acknowledging all the above-mentioned facts as well as the arguments and the documentation on file. However, the Chamber emphasised that in the following considerations it will refer only to the facts, arguments, and documentary evidence, which it considered pertinent for the assessment of the matter at hand.

i. Main legal discussion and considerations

61. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that the parties strongly dispute *(i)* which is the valid and binding contract; *(ii)* the termination of the contract and *(iii)* the just cause of the termination.

62. In this context, the Chamber acknowledged that its task was to determine the following:

- a. Was the offer the valid and binding contract?
- b. Was the Contract the valid and binding contract?
- c. When was the Contract terminated and was there just cause to do so?

Was the offer a valid and binding contract?

63. According to the Claimant, the offer dated 17 August 2022 is the valid contract as it stated all *essentialia negotii* elements and it was accepted by the Player. On the contrary, the Club stated that the Player did not accept the offer in time and therefore, the offer was void. According to the Club, the Player “appeared” at the Club’s premises on 28 August 2022.

64. In accordance with the well-established jurisprudence of the Chamber, in order for an employment contract to be considered as valid and binding, apart from the signature of both the employer and the employee (or the corresponding proof of consent of both parties), it should contain the *essentialia negotii* of an employment contract, such as the parties to the contract and their role, the duration of the employment relationship and the remuneration payable by the employer to the employee.

65. In view of the foregoing, the Chamber noted that (i) the offer indicated a validity of 7 days i.e., 24 August 2022; (ii) the offer was subject to conditions i.e., the player should pass medical examinations; and (iii) the Player argued that he accepted the offer on 22 August 2022, however no evidence of the acceptance was provided.
66. Considering the above, the Chamber concluded that the offer was not accepted within 7 days as the player did not meet his burden of proof to demonstrate that he did so. Therefore, the DRC decided that the offer was not the basis of the parties' employment relationship. Accordingly, the Chamber found that the Player's argumentation on this point is rejected.

Was the Contract a valid and binding contract?

67. As to the Contract dated 3 September 2022, the Player stated that (a) he signed a blank copy, (b) he did not receive a copy of such Contract, and (c) he only received it when the proceedings at FIFA started. Therefore, the Player stated that the Contract shall be considered null and void due to duress and due to an unfair advantage and supported this in the Swiss Code of Obligations. On the contrary, the Club stated that the Contract was signed by both parties and therefore, this is the valid contract.
68. As a preliminary remark, the Chamber recalled that Swiss Law is not applicable to these proceedings. Subsequently, the Chamber wished to point out that since both parties acknowledged that they were under an employment relationship, stating that it was invalid would be contradictory. Therefore, the Chamber analysed whether the Contract was valid and binding to the parties.
69. In view of the foregoing, the Chamber analysed the evidence presented by the Player in order to determine whether the Player signed a blank document and whether the media can corroborate the Player's version.
70. The Chamber concluded that the Player did not sufficiently prove that he signed a blank copy, considering that (i) the photos provided by the Player cannot determine the exact moment of the picture or that he was forced to sign it; (ii) the media articles report cannot guarantee the real terms of a contract considering that it is not a direct source of the Club and (iii) even if he did sign a blank document, this does not free him of the consequences of such lack of diligence.
71. In view of the foregoing the Chamber concluded that the Contract was valid and binding to the parties.

When was the Contract terminated and is there just cause to do so?

72. The Player stated that he was orally informed by the Club on 19 September 2022 that the employment relationship was terminated by the Club and based on the media

communications the Player was aware about the termination of the employment relationship. Moreover, the Player stated that he was never registered and that he was never paid. On the other hand, the Club stated that the Player disappeared from the Club's premises and the Club requested him to return. The Club further indicated that it started the proceedings for registration, and it did not pay the Player's salary as the registration was still on process. The club requested compensation.

73. From the arguments of the parties and the documentation on file, the Chamber was able to establish that:
- The Player considered that the Contract was terminated on 19 September 2022, after the Club orally informed him about the termination. However, there is not any written confirmation by the Club that corroborates this assertion.
 - On 26 September 2022, there is media article reports indicating that the Contract was terminated between the Player and the Club by mutual consent. On this point, the Club stated that it is not responsible of the information that appears in the media and it is only responsible of the information that appears it is own website.
 - On 26 September 2022, the Player stated that the Club terminated the contract without just cause.
 - On 7 October 2022, the Club denied the termination and requested him to return within 72 hours.
 - On 9 October 2022, the Player rejected the letter of the Club and confirmed his position.
74. In view of the foregoing, the Chamber concluded that the Contract was terminated *de facto* by the Player on 26 September 2022, in which he communicated to the Club that the contract was terminated by the Club.
75. With regards to the just cause, the Chamber first recalled its long-standing jurisprudence, according to which only a breach or misconduct which is of a certain severity justifies the termination of a contract without prior warning. In other words, only when there are objective criteria which do not reasonably permit to expect the continuation of the employment relationship between the parties, a contract may be terminated prematurely. Hence, if there are more lenient measures which can be taken in order for an employer to assure the employee's fulfilment of his contractual duties, such measures must be taken before terminating an employment contract. A premature termination of an employment contract can only be an *ultima ratio*.
76. The Chamber noted that the Player was not able to corroborate that (i) the Club terminated the contract due to performance; (ii) the Club prevented him from training; (iii) at the moment of termination September salary was not yet due - in fact, according to the

Contract, the Chamber remarked that the first instalments was to be paid on 10 October 2022 only; and (iv) the Player did not request any clarification regarding its contractual situation and directly claimed compensation.

77. The Chamber further noted that the registration period in Egypt was still open when the Contract was terminated, and the Club requested the registration of the Player in TMS on 11 October 2022.
78. Based on the foregoing, the Chamber concluded that Player had not provided a valid justification for the premature termination of the contract and must therefore be held liable for this breach without just cause.

ii. Consequences

79. Having stated the above, the Chamber turned its attention to the question of the consequences of such unjustified breach of contract committed by the Player.
80. The Chamber observed that the outstanding remuneration at the time of termination, coupled with the specific requests for relief of the Player was EGP 225,333.33 (*pro rata* for 26 days). The Chamber also observed that no payment of the Player's salary was provided by the Club.
81. As a consequence, and in accordance with the general legal principle of *pacta sunt servanda*, the Chamber decided that the Club is liable to pay to the Player the amounts which were outstanding under the contract at the moment of the termination, i.e., EGP 225,333.33.
82. In addition, taking into consideration the Player's request as well as the constant practice of the Chamber in this regard, the latter decided to award the Claimant interest at the rate of 5% p.a. on the outstanding amount as from 11 October 2022 until the date of effective payment.
83. Having stated the above, the Chamber turned to the calculation of the amount of compensation payable to the Club by the Player in the case at stake. In doing so, the Chamber firstly recapitulated that, in accordance with art. 17 par. 1 of the Regulations, the amount of compensation shall be calculated, in particular and unless otherwise provided for in the contract at the basis of the dispute, with due consideration for the law of the country concerned, the specificity of sport and further objective criteria, including in particular, the remuneration and other benefits due to the Player under the existing Contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and depending on whether the contractual breach falls within the protected period.

84. In application of the relevant provision, the Chamber held that it first of all had to clarify as to whether the pertinent employment contract contained a provision by means of which the parties had beforehand agreed upon an amount of compensation payable by the contractual parties in the event of breach of contract. In this regard, the Chamber established that no such compensation clause was included in the employment contract at the basis of the matter at stake.
85. As a consequence, the members of the Chamber determined that the amount of compensation payable by the Player to the Club had to be assessed in application of the other parameters set out in art. 17 par. 1 of the Regulations. The Chamber recalled that said provision provides for a non-exhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable.
86. Bearing in mind the foregoing as well as the claim of the Club, the Chamber proceeded with the calculation of the monies payable to the Player under the terms of the Contract until its term. Consequently, the Chamber concluded that the amount of EGP 819,666.67 serves as the basis for the determination of the amount of compensation for breach of contract.
87. In continuation, the Chamber verified whether the Player had signed an employment contract with another club during the relevant period of time. According to the constant practice of the Chamber as well as art. 17 par. 1 of the Regulations, such remuneration under a new employment contract shall be taken into account in the calculation of the amount of compensation for breach of contract due by a Player to his former club. In particular, the Chamber explained that its standard practice is to calculate the average between the player's remuneration with his former club and his remuneration with the new club, for the exact same period of time comprised between the early termination of the employment contract with the old club and the original expiry date of such contract. In case substantial evidence thereof is provided by the club, the Chamber might additionally grant the damaged club the non-amortised transfer fee paid for the player in breach and/or the actual costs incurred by the damaged club in order to replace the leaving player.
88. Indeed, the Player found a new club. In accordance with information at the disposal of the Chamber however, the player did not have a salary with the Intervening Party.
89. Consequently, on account of all the above-mentioned considerations and the specificities of the case at hand, the Chamber decided that the Player must pay the amount of EGP 409,833.33 to the Club, which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter.
90. Moreover, and taking into consideration the club's request as well as the constant practice of the Chamber in this regard, the latter decided to award the club interest on said compensation at the rate of 5% p.a. as of 26 September 2022 until the date of effective payment.

91. Lastly, the Chamber noted that the Intervening Party is not a purely amateur club in accordance with the information provided by the German Football Association in which it was indicated that the Intervening Party registered professional players at a national level. The Chamber decided that, in accordance with art. 17 par. 2 of the Regulations, TURU 1880 Düsseldorf shall be jointly and severally liable for the payment of the aforementioned amount of compensation.

iii. Compliance with monetary decisions

92. Finally, taking into account the applicable Regulations, the Chamber referred to art. 24 par. 1 and 2 of the Regulations, which stipulate that, with its decision, the pertinent FIFA deciding body shall also rule on the consequences deriving from the failure of the concerned party to pay the relevant amounts of outstanding remuneration and/or compensation in due time.

93. In this regard, the DRC highlighted that:

- against clubs, the consequence of the failure to pay the relevant amounts in due time shall consist of a ban from registering any new players, either nationally or internationally, up until the due amounts are paid. The overall maximum duration of the registration ban shall be of up to three entire and consecutive registration periods.
- against players, the consequence of the failure to pay the relevant amounts in due time shall consist of a restriction on playing in official matches up until the due amounts are paid. The overall maximum duration of the restriction shall be of up to six months.

94. Therefore, bearing in mind the above, the DRC decided that the Respondent/Counter-Claimant and the Intervening Party must pay the full amount due (including all applicable interest) to the Claimant/Counter-Respondent within 45 days of notification of the decision, failing which, at the request of the Claimant/Counter-Respondent, a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods shall become immediately effective on the Respondent/Counter-Claimant in accordance with art. 24 par. 2, 4, and 7 of the Regulations.

95. The Respondent/Counter-Claimant and the Intervening Party shall make full payment (including all applicable interest) to the bank account provided by the Claimant/Counter-Respondent in the Bank Account Registration Form, which is attached to the present decision.

96. The DRC recalled that the above-mentioned ban will be lifted immediately and prior to its complete serving upon payment of the due amounts, in accordance with art. 24 par. 8 of the Regulations.

97. Equally, bearing in mind the above, the Chamber decided that the Claimant/Counter-Respondent must pay the full amount due (including all applicable interest) to the Respondent/Counter-Claimant within 45 days of notification of the decision, failing which, at the request of the creditor, a restriction on playing in official matches for the maximum duration of six months shall become immediately effective on the player in accordance with art. 24 par. 2, 4, and 7 of the Regulations.
98. The Claimant/Counter-Respondent shall make full payment (including all applicable interest) to the bank account provided by the Respondent/Counter-Claimant in the Bank Account Registration Form, which is attached to the present decision.
99. The Chamber recalled that the above-mentioned ban will be lifted immediately and prior to its complete serving upon payment of the due amounts, in accordance with art. 24 par. 8 of the Regulations.

d. Costs

100. The Chamber referred to art. 25 par. 1 of the Procedural Rules, according to which *"Procedures are free of charge where at least one of the parties is a player, coach, football agent, or match agent"*. Accordingly, the Chamber decided that no procedural costs were to be imposed on the parties.
101. Likewise, and for the sake of completeness, the Chamber recalled the contents of art. 25 par. 8 of the Procedural Rules, and decided that no procedural compensation shall be awarded in these proceedings.
102. Lastly, the DRC concluded its deliberations by rejecting any other requests for relief made by any of the parties.

IV. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant/Counter-Respondent, Mohamed Osama Aly Darwish, is partially accepted.
2. The Respondent/Counter-Claimant, Haras El Hodod, must pay to the Claimant/Counter-Respondent the following amount:
 - **EGP 225,333.33 as outstanding remuneration** plus 5% interest *p.a.* as from 11 October 2022 until the date of effective payment.
3. The counterclaim of the Respondent/Counter-Claimant, is partially accepted.
4. The Claimant/Counter-Respondent, must pay to the Respondent/Counter-Claimant the following amount:
 - **EGP 409,833.33 as compensation for breach of contract without just cause** plus 5% interest *p.a.* as from 26 September 2022 until the date of effective payment.
5. The intervening party, TURU 1880 Düsseldorf, is jointly and severally liable for the payment of the aforementioned compensation.
6. Any further claims of the Claimant/Counter-Respondent and the Respondent/Counter-Claimant are rejected.
7. Full payment (including all applicable interest) shall be made to the bank accounts indicated in the **enclosed** Bank Account Registration Forms.
8. Pursuant to art. 24 of the Regulations on the Status and Transfer of Players, if full payment (including all applicable interest) is not made **within 45 days** of notification of this decision, the following **consequences** shall apply:

On the Respondent/Counter-Claimant:

1. The Respondent/Counter-Claimant shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of the ban shall be of up to three entire and consecutive registration periods.
2. The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not made by the end of the three entire and consecutive registration periods.


On the Claimant / Counter-Respondent:

1. The Claimant/ Counter-Respondent shall be restricted on any football-related activity up until the due amounts are paid. The overall maximum duration of the restriction shall be of up to six months.
2. The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not made by the end of the six months.

On the Intervening Party:

1. The Intervening Party shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of the ban shall be of up to three entire and consecutive registration periods.
 2. The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not made by the end of the three entire and consecutive registration periods.
9. The consequences shall **only be enforced at the request of the respective creditor** in accordance with art. 24 par. 7 and 8 and art. 25 of the Regulations on the Status and Transfer of Players.
10. This decision is rendered without costs.

For the Football Tribunal:



Emilio García Silvero

Chief Legal & Compliance Officer

NOTE RELATED TO THE APPEAL PROCEDURE:

According to article 57 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS) within 21 days of receipt of the notification of this decision.

NOTE RELATED TO THE PUBLICATION:

FIFA may publish this decision. For reasons of confidentiality, FIFA may decide, at the request of a party within five days of the notification of the motivated decision, to publish an anonymised or a redacted version (cf. article 17 of the Procedural Rules Governing the Football Tribunal).

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